

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RUDIE ANTHONY JARAMILLO,

Plaintiff,

v.

BURNES, *et al.*,

Defendants.

Case No. 1:22-cv-00233-ADA-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR EXTENSION OF TIME
(ECF No. 15)

ORDER DISMISSING ACTION WITHOUT
PREJUDICE FOR FAILURE TO PAY FILING
FEE AND FAILURE TO OBEY COURT
ORDER
(ECF No. 14)

Plaintiff Rudie Anthony Jaramillo ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 24, 2022, the assigned Magistrate Judge issued findings and recommendations recommending that Plaintiff's application to proceed *in forma pauperis* be denied because he can afford the costs of this action. (ECF No. 8.) The Magistrate Judge also recommended that Plaintiff be ordered to pay the required \$402.00 filing fee in full to proceed with this action. (*Id.* at 2.) Plaintiff filed objections on March 10, 2022, arguing that the money in his trust account may not be considered for court fees. (ECF No. 11.) Finding that Plaintiff had cited to no authorities supporting such an assertion, the Court adopted the findings and recommendations in full and ordered Plaintiff to pay the filing fee in full within twenty-one (21) days after service. (ECF No. 14.)

1 Plaintiff has not paid the filing fee, and the deadline for him to do so has expired. In lieu
2 of paying the filing fee, on October 7, 2022, Plaintiff filed a motion for extension of time. (ECF
3 No. 15.) Plaintiff seeks additional time to request papers from the Prison Trust Office and to
4 access the prison law library. Plaintiff states that he is currently in administrative segregation and
5 needs time to conduct research into the new laws that he contends support his right to obtain *in*
6 *forma pauperis* status. (*Id.*) On November 14, 2022, Plaintiff filed a motion for leave to file a
7 first amended complaint. (ECF No. 17.). Plaintiff filed another motion for leave to file a first
8 amended complaint on November 28, 2022. (ECF No. 18.)

9 The Court finds that Plaintiff had the opportunity to raise these same arguments, and did
10 so, in his objections to the Magistrate Judge's findings and recommendations. Plaintiff does not
11 allege that he did not have sufficient access to the law library at the time those objections were
12 filed, and the arguments set forth in the objections were not sufficient to persuade the Court that
13 the balance in Plaintiff's inmate trust account could not be collected for the purpose of court
14 filing fees. Plaintiff has not provided any reason that the Court should now permit additional time
15 for Plaintiff to conduct further research to support this argument. Plaintiff's motion for extension
16 of time will be denied.

17 Plaintiff's motions for leave to file a first amended complaint will also be denied. Both
18 motions include an updated trust account statement showing that he no longer possesses sufficient
19 funds to pay the filing fee. (ECF Nos. 17 at 4-6; 18 at 3). Plaintiff argues that he should therefore
20 be permitted to proceed *in forma pauperis* and that his first amended complaint should be
21 accepted. This argument is unavailing. Because Plaintiff had sufficient funds to pay the filing fee
22 when the action was initiated, it's not relevant that he has since spent the funds. His *in forma*
23 *pauperis* status is determined as of the date the complaint was filed, and he cannot spend down
24 his assets later to claim indigency that did not exist at that time. The district court has discretion
25 to consider how a plaintiff prioritizes spending available funds – whether on court filing fees or
26 canteen purchases, for example. *See Olivares v. Marshall*, 59 F.3d 109, 112 (9th Cir. 1995).

27 Because Plaintiff has failed to obey the Court's order and pay the appropriate filing fee,
28 and Plaintiff has presented no indication that he intends to pay the filing fee, this case cannot

1 proceed. This matter will be dismissed. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th
2 Cir. 1992).

3 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 4 1. Plaintiff's motion for extension of time, (ECF No. 15), is denied;
- 5 2. Plaintiff's motions for leave to file a first amended complaint, (ECF Nos. 17, 18), are
6 denied
- 7 3. This action is dismissed, without prejudice, for Plaintiff's failure to comply with the
8 Court's order and his failure to pay the filing fee; and
- 9 4. The Clerk of the Court is directed to terminate all pending motions and deadlines and
10 close this case.

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13 IT IS SO ORDERED.

14 Dated: March 20, 2023

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UNITED STATES DISTRICT JUDGE